IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 754 of 1992

For Approval and Signature:

HONOURABLE MR.JUSTICE C.K.BUCH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PATEL SHAILESH PURSOTTAMBHAI & 1 - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
MR.R.C. JANI for Appellants,
MR.A.J.DESAI, ADDL. PUBLIC PROSECUTOR for Opponent,

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CORAM : HONOURABLE MR.JUSTICE C.K.BUCH

Date : 12/12/2006

ORAL JUDGMENT

The present appeal arises out of the judgment and order rendered by the learned Special Judge (Atrocities), Mehsana on 4th August, 1992 in Special

Case (Atrocities) No.26 of 1992, convicting the appellants-accused for the offence punishable under Sections 3 (1) (10) of the Schedule Castes and the Schedule Tribes (Prevention of Atrocities) Act, 1989 and sentenced them to undergo six months rigorous imprisonment and to pay a fine of Rs.200/- each, in default of which to undergo further two months rigorous imprisonment. The learned Special Judge was further pleased to convict the appellants-accused for the offences punishable under Sections 323, 504 and 506 (2) of the Indian Penal Code and sentenced them to undergo three months rigorous imprisonment. The learned Special Judge was pleased to acquit the accused persons from the offence punishable under Section 135 of the Bombay Police Act.

2. The brief facts of the case are as under:

2.1 That on 28th May, 1991, at about 20:00 hours, the present appellants-accused near Sardar Garden of village Kadi, with a view to harm the image of complainant, Mochi Veljibhai Ravjibhai got excited, abused him and beaten him seriously. The accused-appellants had beaten up the complainant with a cycle chain and caused injuries on left hand, head, back-side and on the chest. The accused-appellants also insulted

the complainant by saying *"Sala Dheda"* and whereby the accused-appellants committed the offence as stated above. Thereafter, the F.I.R. was lodged and investigation was conducted. On completion of the investigation, the charge was framed at Exh.7. However, the accused persons have denied the charges levelled against them.

2.2 Evidence was led by the prosecution, as well as, by the defence and on consideration thereof the trial Court came to a conclusion that prosecution was successful in establishing charges against the accused-appellants and recorded conviction as stated above. Aggrieved by the said judgment and order, present appeal is preferred.

3. Learned Advocate, Mr.Jani has taken me through the oral and documentary evidence led during the course of trial and it is argued that the order of conviction and sentence is bad and therefore the same would be quashed and set aside and both the accused persons may be acquitted. He has taken me through the main grounds of challenge mentioned in paragraph No.3 of the memo of appeal.

4. According to Mr.Desai, learned A.P.P., for the respondent-State the finding of the learned trial Judge recording the conviction for the offence punishable under

Sections 323 and 504 requires to be upheld because there is consistent evidence against both the accused having assaulted the complainant and the medical evidence led corroborates the version of the complainant. In response to the query raised by the Court, it is submitted by Mr.Desai, that no acquittal appeal has been preferred by the State and as such there is no cogent and convincing evidence so far as offence punishable under Section 506 (2) of the Indian Penal Code is concerned.

5. Considering the oral as well as documentary evidence led before the Court, it is clear that suddenly the incident had occurred and there was no pre-plane attacked on the complainant by the accused persons. The deposition of the complainant, if read, it is stated that both the accused belongs to village Kadi and they were coming on bicycle. Accused No.1-Patel Shaileshkumar Purshottambhai was riding the bicycle and accused No.2-Jayantibhai Laxmanbhai Salat was sitting on the carrier. The cycle was dashed with the hand-cart of the complainant which resulted into the quarrel. He has further stated that both the accused had given him kick and fist blows and he was also beaten up with the cycle chain by the accused persons. He sustained injuries on the chest, so also, on the hands. His father, Dahyamangal and one Ravjibhai intervened and separated him. Accused No.1 thereafter went inside the house of

one Lakha Rupa. Accused No.2 had also run away from the spot. He has further deposed that F.I.R. was lodged by him which is at Exh.15.

5.1 On plain reading of the F.I.R., it is clear before the trial Court that story of abusing the complainant as he belongs to a schedule caste is a new one and that part of the story does not get corroboration from the original complaint which was produced at Exh.15. However, the learned trial Judge has recorded that story of physical assault which is satisfactorily proved and there is no reason for the Court to disbelieve the say of complainant-Veljibhai Ravjibhai Mochi. There is no serious controversy as to recovery of the muddamal cycle chain from the house of Lakha Rupa. Dahyabhai Mangal who has no close relationship, has supported the prosecution case. He was working in a mill. Of course, he was a chance witness but as the incident has occurred on public street there was no reason for the trial Court to discard his evidence merely because his presence at the spot was a mere chance. It is stated by this witness that there was no question of misidentification as such there is no cross-examination as to capacity to identify the accused by this witness-Dahyabhai Mangalbhai.

5.2 In the same way, some corroboration is also available from the deposition of his father-Ravjibhai

Dahyabhai Mochi. Recovery Panchnama of the muddamal cycle chain is supported by Prosecution Witness No.4, Ramanbhai Jesangbhai Parmar. But, there is no cogent evidence to show that any conduct of the accused or the words uttered by the accused or any one of them was threatening the complainant and therefore the learned trial Judge ought to have acquitted the accused persons from the charge of offence punishable under Section 506 (2) of the Indian Penal Code. There is some force in argument of Mr.Jani that there is no corroboration to the evidence of complainant qua the offending act of accused No.2 otherwise this witness could have stated to the doctor while giving history of the case that he was given kick and fist blow. When these details are missing in the medical evidence and there is no mark of violence or injury which is possible by kick and fist blows, the trial Court could have given benefit of doubt. It appears merely because he was sitting on carrier on back side of the bicycle of accused No.1, he bas been implicated in the offence and therefore only the complainant was not able to locate the direction or place where the accused No.2 had escaped after the incident. But the Court is of the view that because of small quarrel that had started on occurrence of small event, the accused No.1 ought not to have dashed the bicycle with hand-cart and started abusing to the complainant. There was no fault on part of the injured. When the medical evidence also

corroborates the complainant, the Court was supposed to separate in such a situation, the grains from the chaff and when it was possible to do the same in the present case, the trial Judge could have convicted only accused No.1 for the offence punishable under Sections 323 and 504 of the Indian Penal Code because he was responsible for provocation that had taken place at the spot of the incident.

5.3 There is ample force in argument of Mr.Jani that the learned trial Judge has grossly erred in linking the accused with the crime for the offence punishable under the Atrocities Act, because there is no allegation in the complaint and the version before the Court of the complainant and witnesses examined does not get corroboration from the documents at Exh.15 (F.I.R.). It is clear that with a view to attract a grave offence, erroneous additional story has been introduced as an afterthought. Undisputedly, the complainant is not Harijan and when it is claimed by the complainant that he knows the accused, the accused would not have addressed him as Harijan. The community Mochi of course is a schedule caste but the caste-cobbler is altogether a different caste than Harijan community which by itself being different sub-caste. It appears that one word used by the complainant and the witnesses when he was addressed indicating a caste is one of the sub-caste of

Harijan Community. In such a situation, it is difficult for the Court to accept that the reasons assigned by the learned trial Judge for linking the accused with the offence punishable under the Atrocities Act is either logical or legal. There is no reference even as to the proof as to caste certificate issued by the competent authority. Mr.Jani has, therefore, submitted that the learned trial Judge in such a situation ought to have given the benefit of doubt to the accused and according to him the conviction of the accused persons on this count is bad.

6. Learned Advocate, Mr.Jani has submitted that after lapse of about 14 years if accused persons are sent to Jail on account of small quarrel who had no criminal background and was a young man of 24 years at relevant point of time, he should be given the benefit under the Probation of Offenders Act and or the advantage under Section 360 of the Criminal Procedure Code. Ultimately, he had remained in custody prior to his enlargement on bail pending the trial. The record of the Court shows that he had remained in Jail from the date of his arrest i.e. 29/5/1991 to 7/6/1991. This can be considered by the Court while granting the benefit under Section 360 of the Criminal Procedure Code and he may not be asked to go to Jail again.

7. Having considered the totality and the submissions made by Mr.Desai, the Court is of the view that this is not case where the Court should grant the benefit under the Probation of Offenders Act. The offence has been committed on a public street and there was no reason for the accused No.1 to use the cycle chain for beating the complainant. It appears that only one person had rushed to his rescue. This indirectly speaks about the anger and the impression that the accused No.1 must be carried. The village Kadi a very small town, is undisputed fact so I am not inclined to accept the submission made by Mr.Jani to give the benefit under the provision of Probation of Offenders Act. However, the substantive sentence may be reduced by enhancing the amount of fine. Learned A.P.P., Mr.A.J.Desai, has submitted that by increasing the amount of fine, the Court may treat the period of imprisonment as already undergone, as the attack was not a planned one or arranged one and it was happened suddenly.

8. In the result, the present Appeal is partly allowed. The judgment and order dated 4th August, 1992 rendered by the learned Special Judge, (Atrocities) Mehsana in Special Case (Atrocities) No.26 of 1992 is hereby altered.

8.1 The order of conviction and sentence for the

offence punishable under Sections 3 (1) (10) of the Schedule Castes and the Schedule Tribes (Prevention of Atrocities) Act, 1989 and under Section 506 (2) of the Indian Penal Code rendered against the accused persons is hereby quashed. Both the accused persons are given the benefit of doubt and they are acquitted from these charges.

8.2 The accused No.2 – Jayantilal Laxmanbhai Salat is given the benefit of doubt even for the offence punishable under Sections 323 and 304 of the Indian Penal Code and accused No.2 is acquitted from that charges. Amount of fine, if paid, by the accused No.2, be refunded to him. Bail Bond executed by the accused No.2 shall stands discharged.

8.3 So far as accused No.1-Patel Shaileshkumar Purshottambhai is concerned, the order of conviction and sentence for the offence punishable under Sections 323 and 504 of the Indian Penal Code is hereby confirmed. The quantum of punishment and the period of substantive imprisonment is reduced to the period already undergone by accused No.1 i.e. from 29/5/1991 to 7/6/1991. Accused No.1 is ordered to pay a fine of Rs.5000/- instead of Rs.200/-. Remaining amount of fine be paid before the trial Court within 15 days from today, in default, accused No.1 is ordered to undergo rigorous imprisonment

for the period of one and half months. On receipt of the amount of fine, the learned trial Judge shall issue Notice to the complainant and shall pay Rs.4,000/- to the injured complainant -Veljibhai Ravjibhai Mochi on proper identification and shall intimate to the Court about the compensation paid to him. Bail Bond executed by the accused No.1 shall stands discharged.

(C.K.BUCH, J.)

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